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2011 IL App (3d) 100090-U

Order filed August 31, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF
ILLINOIS,

Plaintiff-Appellee,

V.

WILLIE CAMPBELL,

Defendant-Appellant.

) Appeal from the Circuit Court
) of the 12th Judicial Circuit,
) Will County, Illinois,
)
) Appeal No. 3–10–0090
) Circuit No. 08–CF–2193
)
) Honorable
) Daniel J. Rozak,
) Judge, Presiding.

PRESIDING JUSTICE CARTER delivered the judgment of the court. Justices O'Brien and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* Defense counsel is allowed to withdraw his argument on defendant's waiver of right to a jury trial. The order to pay a \$200 DNA analysis fee was improper and should be vacated because defendant was already ordered to pay this fee in a prior conviction.

¶ 2 Defendant, Willie Campbell, appeals from a bench trial where he was convicted of armed robbery (720 ILCS 5/18–2 (West 2008)). Defendant raises two issues on appeal: (1) that the record does not demonstrate defendant knowingly waived his right to a jury trial; and (2) that the

trial court improperly imposed a \$200 deoxyribonucleic acid (DNA) analysis fee as part of his sentence, and the fee should be either vacated or reduced based on defendant's presentence incarceration credit. Defense counsel has withdrawn the first argument. We agree with defendant on the second argument that, because a \$200 analysis fee was already ordered in his previous convictions, the portion of the judgment ordering him to pay the \$200 analysis fee must be vacated. We affirm in part and vacate in part.

¶ 3

FACTS

¶ 4 Defendant was charged with two counts of armed robbery relating to events of September 9, 2008. On the date of trial, May 11, 2009, defendant knowingly and voluntarily waived his right to a jury trial. At the close of the bench trial, defendant was found guilty of armed robbery. Following a sentencing hearing, defendant was sentenced to 18 years' imprisonment for armed robbery to run consecutive to 3 years' imprisonment for defendant's convictions in a prior case for unlawful use of a weapon and aggravated unlawful use of a weapon (720 ILCS 5/24–1(a)(7)(ii), 24–1.6(a)(1), (a)(3)(A) (West 2006); *People v. Campbell*, No. 3–10–0091 (2011) (unpublished order under Supreme Court Rule 23)). After his convictions in the prior case, defendant was ordered to submit DNA information to the Illinois State Police department and pay a \$200 DNA analysis fee. *Campbell*, No. 3–10–0091. Defendant was also ordered to submit DNA information and pay a \$200 DNA analysis fee for his armed robbery conviction in this case. Defendant appeals.

¶ 5

ANALYSIS

¶ 6 Defendant's first argument requests that the cause be remanded for a new trial because defendant did not knowingly waive his right to a jury trial. This argument has been withdrawn

by defense counsel. A supplemental record obtained by the State reveals that defendant did execute a valid jury waiver before the cause proceeded to a bench trial. Defense counsel is allowed to withdraw this argument, and defendant's conviction is affirmed.

¶ 7 We next examine defendant's second argument that the trial court improperly ordered a \$200 DNA analysis fee as part of his sentence. Defendant asserts he was already ordered to pay a DNA analysis fee for his prior felony convictions for unlawful use of a weapon. *Campbell*, No. 3–10–0091. Under section 5–4–3(a) of the Unified Code of Corrections, a person convicted of a felony shall be required "to submit specimens of blood, saliva, or tissue to the Illinois Department of State Police." 730 ILCS 5/5–4–3(a) (West 2008). If such a person is required to submit a DNA sample, they are also required to pay an analysis fee of \$200. 730 ILCS 5/5–4–3(j) (West 2008).

¶ 8 Although the statute is silent about whether it requires multiple DNA samples when more than one felony conviction is involved, the recent supreme court decision in *People v. Marshall*, 242 Ill. 2d 285, 296 (2011) held that a "one-time submission into the police DNA database is sufficient to satisfy the purpose of the statute." In reviewing the judgment ordering defendant to submit to DNA testing and pay a \$200 fee, the standard used is *de novo* because it is a question of statutory interpretation. *Id.*

¶ 9 In this case, the record reveals defendant was ordered to pay a \$200 DNA analysis fee relating to his prior convictions for unlawful use of a weapon, as evidenced by this court in *Campbell*, No. 3–10–0091. Defendant was again charged the fee in his armed robbery conviction. Under the analysis in *Marshall*, payment of a DNA analysis fee is authorized only when defendant's DNA is not currently registered in the system. *Marshall*, 242 Ill. 2d 285.

Consistent with *Marshall*, we vacate the \$200 DNA analysis fee imposed at defendant's sentencing because he already submitted DNA and paid the fee following his prior convictions for unlawful use of a weapon. See *id.* Since we vacate the DNA analysis fee, we need not address defendant's alternative argument that he may apply presentence incarceration credit to reduce the fee.

¶ 10 Finally, although defendant did not raise this issue in a postsentencing motion, defendant did not forfeit this issue on appeal. The trial court exceeded its statutory authority when it ordered defendant to pay a duplicative DNA analysis fee, and therefore the order was void. See *id.* Defendant's challenge to a void order may be corrected on appeal at any time, and is not subject to forfeiture. *Id.*

¶ 11 CONCLUSION

¶ 12 For the foregoing reasons, the judgment of the trial court of Will County is affirmed in part and vacated in part.

¶ 13 Affirmed in part and vacated in part.